Department of Defense FOIA “On the Horizon”

Defense Freedom of Information Policy Office
(703) 696-4689
DFOIPO@whs.mil

New Era of FOIA

– Open Government Act of 2007

+

– President's Memos of January 2009

+

– Attorney General's Memo of March 2009

=

Changes, changes, and more changes

On the Horizon for DoD

- Proactive Disclosures
- OGIS Procedures
- DoD FOIA Certification Program
- Annual Report
- DoD FOIA Directive and DoD FOIA Manual
- FOIA Program Reviews
- Web-site Reviews
- Backlog Review

PROACTIVE DISCLOSURES

President says, agencies should

...take affirmative steps to make information public

...do not wait for specific requests from the public

...use modern technology to inform citizens.

Four Categories of Records Required to be Disclosed Proactively

- 5 U.S.C. § 552(a)(2)(A) Records – Final opinions and orders made in the adjudication of cases that may be cited, …
- 5 U.S.C. § 552 (a)(2)(B) Records – Statements of policy and interpretations … adopted by the agency … not published in the Federal Register.
- 5 U.S.C. § 552 (a)(2)(C) Records – Administrative staff manuals and instructions, … that establish DoD policy or … affect the public.
- 5 U.S.C. § 552 (a)(2)(D) Records – Records released to the public, under the FOIA, that are or will likely become the subject of subsequent requests.

5 U.S.C. § 552 (a)(2)(D) Records

We often think of documents …

… that have been frequently requested
(3 or more times)
… that are considered HOT ITEMS.

DoJ OIP Guidance

- In addition to the four categories in (a)(2), agencies should actively seek out and identify …
  - … records that fall outside of (a)(2)
  - … records of sufficient public interest
  - … records that warrant automatic disclosure on an agency's website

Proactive Disclosures

- OSD FOIA has initiated a practice
  - Established a library of openness
  - Looked at documents previously disclosed under FOIA
  - Identified tens of thousands of pages
  - Scanned and posted to website
  - Made searchable by key word

NEEDED FROM FIELD

- Look for ways to implement a proactive disclosure library
- Insure that site is key word searchable to the greatest extent possible
- Link so that DFOIPO can link to Component Reading Rooms and disclosure library
- Keep track of number of pages posted

OFFICE OF GOVERNMENT INFORMATION SERVICES (OGIS)

OPEN Government Act of 2007 amended the FOIA

Established ...

- Office of Government Information Services (OGIS).
- FOIA Public Liaisons
- FOIA Requester Service Centers

Goal ...

... to improve customer service and handle complaints

OGIS

- reviews agency FOIA programs;
- reviews agency compliance;
- recommends FOIA policy changes;
- offers mediation services;
- issues advisory opinions.

DoD established policy for handling complaints received via OGIS

Step 1 – Requester contacts OGIS.

Step 2 – OGIS contacts FOIA Public Liaison.

Step 3 – Public Liaison advises DFOIPO + OGIS of outcome.

Step 4 – If Public Liaison unable to resolve dispute, OGIS will determine if further attempts at resolution are necessary.

Step 5 – If no, issue closed.

OGIS PROCEDURES CONTINUED

Step 5 – If yes, OGIS will make inquiries of requester and agency and offer mediation.

Step 6 – If both parties agree to mediation, OGIS will contact DFOIPO.

Step 7 – DFOIPO will work with DoD Alternative Dispute Resolution (ADR) Liaison to identify a shared neutral for mediation purposes.

DoD Training for Mediation Skills

- DoD FOID is working with DoD ADR team to establish a training program for Public Liaisons and FOIA Requester Service Center Representatives. This will give DoD …
  - Skilled Public Liaisons and Service Center Representatives
  - Pool of trained Mediators – who may serve as shared neutrals

Training for Customer Relations

- Looking to establish a training course to benefit FOIA processors DoD-wide
  - Sharpen negotiating skills
  - Take customer service skills to the next level

Complaints Received

We have seen -

- complaints about withholding documents…
- complaints about fee waiver denials…
- complaints about processing delays…

…… #1 complaint we have seen is…

Our Lack of Communication

Experience shows…

… we are not answering telephone calls

… we are not answering emails

… we are not answering status request letters

DFOIPO Wants to Track

Advise DFOIPO when…

…requesters seek OGIS resolution

…OGIS issues are resolved by DoD component

… issues are resolved by OGIS

DoD FOIA CERTIFICATION PROGRAM

Exploration Phase –

- Do we need one?
- FBI Fieldtrip (look at Certification Program)
- Working Group to share thoughts and ideas
- How would we accomplish?

ANNUAL REPORTING

- “Heads-up” memo is coming soon
- DoD Training September 21st
- Quarterly reporting?
- Should know where backlog stands
- Should know number received
- Should know number closed

DoD Directive and Manual

- Directive = More Openness
- Manual = Substantial Re-write
- Review and Comment Stage

FOIA PROGRAM REVIEWS

We will start looking at compliance DoD-wide.

- Do we have implementing regulations?
- Are web-sites compliant?
- Are we reducing backlogs?

DoD SUPPORT

We are here to help you. Tell us your needs.

- More training?
- Meetings with leadership?
- More guidance?

CONTACT US

Defense Freedom of Information and Policy Office (DFOIPO)

dfoipo@whs.mil

703-696-4703